Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1997

STEVEN DUNLAP,
Petitioner,

v.

THE STATE OF TEXAS
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS,
THIRD DISTRICT OF TEXAS,
AT AUSTIN

PETITIONER'S BRIEF

STEVEN DUNLAP
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SUPREME COURT, U.S.

QUESTION PRESENTED

DOES A TRIAL COURT'S ORAL PRONOUNCEMENT OF REVOCATION PREMISED UPON FINDINGS NOT ALLEGED BY THE STATE'S MOTION TO REVOKE VIOLATE A PROBATIONER'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS.

PARTIES

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No. _____

IN THE
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STEVEN DUNLAP,
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v.

THE STATE OF TEXAS
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS,
THE THIRD DISTRICT OF TEXAS,
AT AUSTIN

PETITIONER'S BRIEF

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the Court of Appeals, Third District of Texas, at Austin appears at Appendix A to the Petition and is not published.

JURISDICTION

The Texas Court of Criminal Appeals denied discretionary review of this case without opinion on August 13, 1997, Case no. 0780-97. The Court's notice is reproduced at Appendix B.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS

Dunlap bases his claim upon Section 1 of the Fourteenth Amendment to the United States Constitution:

> All Persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST., AMEND. XIV, SECTION 1.

STATEMENT OF THE CASE

On October 4, 1995, the State filed motions to revoke probation in cause numbers 94-2463, 94-2625, and 94-4260, each styled *State of Texas v. Steven Dunlap* in the 331st District Court of Travis County Texas (hereinafter "trial court"). The trial court continued Dunlap on cause numbers 94-2463 and 94-2625. Dunlap was revoked from community supervision in cause number 94-4260, for which he had been convicted of indecency with a child, and sentenced to three years in the Texas Department of Criminal Justice, Institutional Division. The Third Court of Appeals, in an unpublished opinion, affirmed Dunlap's conviction on April 3, 1997. *Dunlap v. State*, No. 3-95-743-CR (Tex. App.– Austin, April 3, 1997). Appendix A. The Court of Criminal Appeals of Texas denied discretionary review without opinion on August 13, 1997. APPENDIX B.

At the time of the hearing on the State's motion to revoke, Dunlap was serving concurrent ten (10) year probationary terms on each of the three separate offenses. The motions were consolidated

for hearing, which was conducted on November 20, 1995. Dunlap pled true to State's allegations, to wit:

> 1. failed to avoid the use of alcoholic beverages as by defendant's admission;
>
> 2. did not report to probation officer on December 12, 1994 and August 8, 1995;
>
> 3. failed to have no contact with the victim, Valerie Spradling.

At the hearing on the State's motion to revoke, evidence was heard in mitigation of the violations alleged by the State. The trial court continued Dunlap on cause numbers 94-2463 and 94-2625. Dunlap was revoked from community supervision in cause number 94-4260, for which he had been convicted of indecency with a child, and sentenced to three years in the Texas Department of Criminal Justice, Institutional Division.

Dunlap's probation officer, Kelly Pond testified at the hearing. According to Pond, the specifics of the allegations against Dunlap in support of the State's motion to revoke were that he consumed "some champagne" over the holidays in the previous

year, C 2;[1] that he failed to report on two occasions, C 3; and that he had contact with Valerie Spradling, the alleged victim of the charge of indecency with a child, in that Spradling temporarily resided in the apartment at which Dunlap maintained residence,[2] Dunlap took Spradling to dinner during the holidays of the previous year, and Dunlap had had telephone conversations with Spradling to assist in her release from jail on one occasion, and to arrange for payment of her rent on another. C 4. Pond testified that the instance of alcohol consumption occurred during the holiday season of the previous year. Pond did not indicate that Dunlap had consumed alcohol on any other occasion during his probation. C 5. Pond also testified that she had no knowledge that Dunlap ever initiated contact with Spradling, or that he ever had contact with Spradling in the absence of third parties. C 5.

---

[1] References to appendices shall be designated by the letter of the appendix (e.g., "A", "B", etc.) followed by corresponding page reference in the respective appendices.

[2] This period was limited to the time that Dunlap was on work release at the Travis County Jail facility, where he was required to report and spend his nights.

Dunlap admitted that Spradling was residing at his residence during the time that he was on work release following the adjudication of the three offenses subject to the hearing to revoke probation. C 9. According to Dunlap, Dunlap's "ex-wife kicked my daughter (Spradling) out of the house, and she had no place to stay." C 9. Spradling approached Dunlap and requested to live at his residence. C 9. Dunlap agreed only for the period that he would be on work release, believing that he would not have contact with her due to working days and spending nights in the jail. C 9. Spradling also approached Dunlap for financial assistance with various items such as a down payment for a vehicle and rent for her own apartment. C 9. However, Dunlap never initiated contact for this purpose, or offered unsolicited assistance. C 10. Spradling had no other family to offer her assistance with these matters. C 10.

Spradling also testified that she never had private contact with Dunlap. C 6. While Spradling was staying in Dunlap's residence, Dunlap was on work release; spending his nights in the county jail, and his days at work. C 8. Dunlap's younger teen-

aged son also resided at Dunlap's residence during this time, who, according to Spradling, was her closest family relation. C 7-8. In fact, Spradling testified that she was the primary care giver for Dunlap's son, functioning as a "mother figure." C 8. Spradling had no contact with her mother during this period. C 7.

The trial court made the following findings, upon which it specifically premised Dunlap's revocation in cause number 94-4260:

> State's filed a Motion to Revoke, and you've pled true to the Motion to Revoke, and that alone is legally sufficient for the Court to revoke your probation; however, in Cause No. 94-2625 on forgery and Cause No. 94-2463 on passing, I'll continue you on probation on both of those cases under the same terms and conditions that you're under now.
>
> Now, Cause No. 94-4260, Steven Dunlap, you're on ten years' probation for indecency, and that does present a problem for the Court. While you have pled true to the violation of conditions of probation, drinking some champagne on the holidays doesn't bother me particularly. Continuing to see your stepdaughter when you were ordered not to is bad. I understand the reasons you did that, but that's bad. I don't know about deviant

> masturbation, but cruising the malls, it says here, targeting children, is something that the Court can't live with. I'm going to find that in Cause No. 94-4260, Steven Dunlap, you have violated your probation. Your probation is revoked.

C 11.

Even though the trial court specifically found Dunlap's violation of allegation number one that he "failed to avoid the use of alcoholic beverages," and his violation of allegation number three that he "failed to have no contact with the victim, Valerie Spradling" was mitigated by the circumstances and that the court did not intend to revoke Dunlap's probation for these violations, the trial court's written order states that these violations were the basis of Dunlap's revocation. Compare C 11 with D 1-2.

ARGUMENT

THE TRIAL COURT'S REVOCATION OF DUNLAP'S PROBATION WAS AN ABUSE OF DISCRETION VIOLATING DUNLAP'S STATE AND FEDERAL RIGHT TO DUE PROCESS WHEN THE SPECIFICALLY STATED BASIS WAS NOT A VIOLATION ALLEGED BY THE STATE IN IT'S MOTION TO REVOKE.

Probation is a valuable liberty that is protected by the Fourteenth Amendment to the federal constitution. *Gagnon v. Scarpelli*, 411 U.S. 778, 781 (1973) (*citing Morrissey v. Brewer*, 408 U.S. 471 (1972)); *Black v. Romano*, 471 U.S. 606, 611 (1985); *Bearden v. Georgia*, 461 U.S. 660, 668-69 (1983); *Douglas v. Buder, Judge*, 412 U.S. 430, 432 (1973). A probationer's liberty interest includes rights such as to "be gainfully employed and free to be with family and friends and to form the other enduring attachments of normal life." *Morrissey v. Brewer*, 408 U.S. at 482.[3] The question is not one of weight of the individual's interest, but whether if the nature of the interest is one

---

[3] *Morrissey v. Brewer* involved parole rather than probation, however, there is no difference in analysis relevant to the guaranty of due process between revocation of parole and revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

which is contemplated by the "liberty" language of the Fourteenth Amendment. *Fuentes v. Shevin*, 407 U.S. 67 (1972).

The decision to continue or to revoke probation under the laws of the State of Texas rests in the discretion of the trial court. *Wester v. State*, 542 S.W.2d 403, 405 (Tex. Crim. App. 1976). However, the trial court is not afforded absolute discretion in the decision to revoke probation. *De Gay v. State*, 741 S.W.2d 445, 449 (Tex. Crim. App. 1987) (*citing Scamardo v. State*, 517 S.W.2d 293 (Tex. Crim. App. 1974)). The Court of Criminal Appeals has repeatedly held that once probation has been granted by the trial court, it should not be arbitrarily withdrawn. *De Gay*, 741 S.W.2d at 449; *Wester*, 542 S.W.2d at 405. The issue before a reviewing court in determining the trial court's proper exercise of discretion is whether the probationer was afforded due process of law. *De Gay*, 741 S.W.2d at 450. The trial court has no authority to revoke probation in the absence of a motion enumerating the violation of specific conditions of probation. *McBee v. State*, 316 S.W.2d 748, 749 (Tex. Crim. App. 1958) (held: trial court abused it's discretion by revoking the probationer for having committed a new offense,

when the evidence "at most showed that he *attempted*" (emphasis added) to commit the offense alleged by the State). If revoked, a probationer faces incarceration, and, therefore, "the termination of probation inflicts a grievous loss on the probationer and often on others." *Rogers v. State*, 640 S.W.2d 248, 251-52 (Tex. Crim. App, 1981, *opinion on reh'g*, March 3, 1982).

"Where such discretion exists, . . . the probationer is entitled to an opportunity to show . . . that there was a justifiable excuse for any violation or that revocation is not the appropriate disposition." *Black v. Romano*, 471 U.S. at 613, *citing Morrissey v. Brewer*, 408 U.S. at 488. The trial court stated that Dunlap's isolated use of alcohol "does not bother [the Court] particularly," and that the contact between Dunlap and Spradling, albeit prohibited, was "understandable;" and accordingly, continued Dunlap's probation on two of the three causes subject to the State's motion to revoke. C 11. The trial court ruled on the record that it was revoking Dunlap's probation on the third cause due to findings that Dunlap had been "cruising the malls" and "targeting children." R 34. No such activity was alleged by the State. The trial court's

the malls" and "targeting children" was an abuse of discretion in the absence of a motion alleging any such activity. The allegations that Dunlap had (1) failed to avoid the use of alcoholic beverages, (2) did not report to probation officer on two occasions, and (3) failed to have no contact with Spradling, as contained in the State's motion, were insufficient to inform Dunlap that he would be called to defend himself against such an accusation of "cruising the malls" and "targeting children." *See Tamez v. State*, 534 S.W.2d 686, 689 (Tex. Crim. App. 1976); *McBee*, 316 S.W.2d at 749.

The Court of Appeals opinion affirmed Dunlap's revocation, holding that the subsequent written order of the trial court, conforming to the State's allegation, was sufficient and controlling over the Court's oral pronouncement. A 6. The Court of Appeals further faulted Dunlap for "fail[ing] to ask the trial court to make specific findings of facts and conclusions of law." A 5. However, the Court of Appeals completely ignores the record reflecting that the trial court did in fact make findings of fact on the record.

> State's filed a Motion to Revoke, and you've pled true to the Motion to Revoke, and that alone is legally

> sufficient for the Court to revoke your probation; however, in Cause No. 94-2625 on forgery and Cause No. 94-2463 on passing, I'll continue you on probation on both of those cases under the same terms and conditions that you're under now.
>
> Now, Cause No. 94-4260, Steven Dunlap, you're on ten years' probation for indecency, and that does present a problem for the Court. While you have pled true to the violation of conditions of probation, *drinking some champagne on the holidays doesn't bother me particularly. Continuing to see your stepdaughter when you were ordered not to is bad. I understand the reasons you did that*, but that's bad. I don't know about deviant masturbation, *but cruising the malls*, it says here, *targeting children, is something that the Court can't live with.* I'm going to find that in Cause No. 94-4260, Steven Dunlap, you have violated your probation. *Your probation is revoked.*

C 11. (Emphasis added). The written order of revocation is in direct conflict with the record of the court's findings and judgment pronounced at hearing. Compare C 11 with D 1-2. "[T]he findings and conclusions upon which the court acts should be set out in the order of the revocation." *McBee*, 316 S.W.2d at 749. The trial

probation clearly constituted the court's findings of fact and conclusions of law.

The Court of Appeals' opinion has effectively granted the trial court unbridled discretion to revoke a probationer for any grounds whether alleged or not, or even supported by evidence, as long as the final written order conforms to the State's motion even in the face of the court's contradictory findings on the record. The record clearly reflects that the trial court did not intend to revoke Dunlap's probation upon the allegations of the State's motion. Such a proceeding lacks the fundamental fairness mandated by the Fourteenth Amendment, and should be reversed due to the trial court's denial of Dunlap's right to due process.

CONCLUSION

For the above reasons, Dunlap prays the Court issue a writ of certiorari to review the judgment below.

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APPENDIX A

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 02-95-00743-CR

Steven Dunlap, Appellant

v.

The State of Texas, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 331ST JUDICIAL DISTRICT NO. 0944260, HONORABLE TOM BLACKWELL, JUDGE PRESIDING

This is an appeal from an order revoking the grant of community supervision. Appellant Steven Dunlap, on his plea of guilty, was convicted of the offense of indecency with a child. *See* Tex. Penal Code Ann. § 21.11(a)(1) (West 1994). On November 21, 1994, appellant's punishment was assessed at imprisonment for ten years and the trial court granted appellant community supervision.

On October 4, 1995, a motion to revoke community supervision was filed. In that motion, the State alleged appellant violated the three conditions of community supervision that he: (1) avoid the use of all alcoholic beverages; (2) report to his Community Supervision Officer on the second Wednesday of each month; and (3) have no contact with the victim, either in writing, in person, or by phone until granted permission. Appellant entered a plea of true to each of the alleged violations. After the revocation hearing, the trial court entered its order revoking community supervision. The trial court reduced appellant's punishment from ten to three years and imposed sentence. The trial court refused to revoke community supervision in two separate cases in which the State sought revocation.

On appeal, appellant presents two points of error asserting that:

> The trial court's revocation of Dunlap's probation was an abuse of discretion violating Dunlap's state and federal right to due process when the specifically stated basis was not a violation alleged by the State in it's motion to revoke.

The written order revoking Dunlap's probation was invalid when it did not reflect the court's judgment announced on the record.

Appellate review of an order revoking probation is limited to the issue of whether the court abused its discretion. *Barnett v. State*, 615 S.W.2d 220, 222 (Tex. Crim. App. 1981); *Jackson v. State*, 915 S.W.2d 104, 106 (Tex. App.--San Antonio 1996, no pet.). In considering the propriety of the trial court's revocation of probation, a reviewing court will review such action only for an abuse of discretion. *Caddell v. State*, 605 S.W.2d 275, 277 (Tex. Crim. App. 1980); *Stevens v. State*, 900 S.W.2d 348, 351 (Tex. App.--Texarkana 1995, pet. ref'd). One sufficient ground for revocation will support the court's order revoking probation. *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. 1980); *Sanchez v. State*, 603 S.W.2d 869, 971 (Tex. Crim. App. 1980); *Williams v. State*, 910 S.W.2d 83, 86 (Tex. App.--El Paso 1995, no pet.). A defendant's plea of true, standing alone, is sufficient to support revocation of probation. *Moses v. State*, 590 S.W.2d 469, 470 (Tex. Crim. App. 1979); *Cole v. State*, 578 S.W.2d 127, 128

(Tex. Crim. App. 1979); *Burns v. State*, 835 S.W.2d 733, 735 (Tex. App.--Corpus Christi 1992, pet. ref'd).

Appellant's contention that he was deprived of his constitutional rights was not raised in the trial court, and therefore, presents nothing for review. *Branch v. State*, 477 S.W.2d 893, 895 (Tex. Crim. App. 1972). Constitutional errors may be waived by failure to object on those grounds at trial. *Broxton v. State*, 909 S.W.2d 912, 918 (Tex. Crim. App. 1985); *Briggs v. State*, 789 S.W.2d 918, 921 (Tex. Crim. App. 1990).

Appellant's argument is based on the trial court's statement made after hearing evidence on the motion to revoke.

> THE COURT: All right. Steven Dunlap. Come forward please.
>
> State's filed a Motion to Revoke, and you've pled true to the Motion to Revoke, and that alone is legally sufficient for the Court to revoke your probation; however, in Cause No. 94-2625 on forgery and Cause No. 94-2463 on passing, I'll continue on probation both those cases under the same terms and conditions you're under now.
>
> Now, Cause No. 94-4260, Steven Dunlap, you're on ten years probation for indecency, and that does present a

problem to the Court. While you have pled true to the violation of conditions of probation, drinking some champagne on the holidays doesn't bother me particularly. Continuing to see your stepdaughter when your were ordered not to is bad. I understand the reasons you did that, but that's bad. I don't know about deviant masturbation, but cruising the malls, it says here, targeting children, is something that the Court just can't live with. I'm going to find that Cause No. 94-4260, Steven Dunlap, you have violated your probation. Your probation is revoked. Your punishment assessed at three years in the Institutional Division of the Texas Department of Criminal Justice. I will give you credit for your back time, and you've got a lot of back time credit. Do you have anything to say why you should not be sentenced at this time?

THE DEFENDANT: Judge, I'm extremely sorry that I've done what I've done. I've only done what I've done -- I was caught in a rock and a hard place. I didn't know what to do. I would appreciate any leniency at all. I don't know what else to say. Your Honor.

THE COURT: Well, I've cut it from ten to three, and with credit for your back time, you're not going to have to do too much.

> All right, then. You're sentenced to serve three years in the Institutional Division of the Texas Department of Criminal Justice . . . .

Appellant complains that the trial court's reasons for revocation stated at the conclusion of the hearing were reasons or conditions not alleged in the motion to revoke and that the stated reasons do not correspond to the reasons stated in the written order to revoke. Appellant argues that the trial court's reasons for revocation stated at the conclusion of the hearing that appellant was "cruising the malls" and "targeting children" were not alleged in the motion to revoke. Appellant is mistaken. A trial court's written order revoking community supervision controls over an oral pronouncement. *Clapper v. State*, 562 S.W.2d 250, 251 (Tex. Crim. App. 1978); *Albon v. State*, 537 S.W.2d 267, 268-0 (Tex. Crim. App. 1976); *Balli v. State*, 530 S.W.2d 123, 125 (Tex. Crim. App. 1975). In this case, the trial court's written order revoking community supervision does so on all three of the violations alleged in the motion to revoke, any one of which would be sufficient. Furthermore, appellant failed to ask the trial court to

he waived such findings. *See McDonald v. State*, 608 S.W.2d 192, 198-99 (Tex. Crim. App. 1980). Where no request for findings of fact and conclusions of law are made, the trial court need not make such findings. *Bradley v. State*, 608 S.W.2d 652, 655 (Tex. Crim. App. 1980); *Mason v. State*, 495 S.W.2d 248, 250 (Tex. Crim. App. 1973).

To summarize, the State, in its motion to revoke, alleged appellant violated three conditions of community supervision, which had been imposed when community supervision was granted. Appellant's plea of true to these allegations standing alone supplies sufficient evidence to prove the allegations. Moreover, appellant admitted at the hearing he had violated the alleged conditions. The trial court's formal written order recites that the trial court found appellant violated the three alleged conditions of community supervision. We conclude that the trial court did not abuse its discretion in revoking community supervision. Appellant's points of error are overruled.

The order of the trial court is affirmed.

_____

Carl E. F. Dally, Justice

Before Chief justice Carrol, Justices B. A. Smith and Dally*

Affirmed

Filed: April 3, 1997

Do Not Publish

APPENDIX B

(Notification card postmarked August 14, 1997)

OFFICIAL NOTICE FROM THE COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION, AUSTIN, TEXAS 78711

August 13, 1997
COA#: 03-95-00743-CR
RE: Case No. 0780-97
STYLE: DUNLAP, STEVEN

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

Troy C. Bennett, Jr. Clerk

JAMES B. MATTHEWS
603 W 13TH ST
SUITE 1A-422
AUSTIN TX 78701

APPENDIX C

KELLY POND, DIRECT EXAMINATION BY THE STATE:
(Contained in one volume trial court record at pp. 5-7)

Q. Can you please state your name for the record.

A. Kelly Pond.

Q. And how are you employed, Ms. Pond?

A. Probation officer for Travis County.

Q. And part of your duties as a probation officer is to supervise individuals; is that correct?

A. That's correct.

Q. Have you had a chance to supervise a person by the name of Steven Dunlap?

A. Yes.

Q. And you supervised him in three probations; in Cause No. 94-2625, 94-2463 and 94-4260; is that correct?

A. That's correct.

Q. Do you see Mr. Dunlap in the courtroom?

A. Yes, I do.

Q. Can you please point him out and describe an article of clothing that he's wearing?

A. He's to my left. He's wearing jail whites.

[PROSECUTOR]: Your Honor, may the record reflect that the witness has identified the defendant?

THE COURT: All right.

Q. And, Ms. Pond, this is the individual, once again, that you supervised on these three probations; is that correct?

A. That's correct.

Q. And part of the conditions that Mr. Dunlap was ordered by the Court to abide by was to have -- number four, avoid the use of all narcotics, habit-forming drugs, alcoholic beverages and controlled substances; is that correct?

A. That's correct.

Q. Okay. And Mr. Dunlap's admitted to you that he has had alcoholic beverages?

A. That's correct.

Q. Please tell the Court how that came about and the extent of that.

A. He stated that he had had -- over the holidays of last year, had had some alcoholic beverages, some champagne.

Q. Okay. Do you know of any other incidents?

A. No, I do not.

Q. All right. And another condition -- and this is -- in all three, that was condition of fail -- that he failed; correct?

A. That's correct.

Q. In all three of the cases?

A. That's correct.

Q. And another condition was that he was supposed to report to you as directed; is that correct?

A. Yes, sir.

Q. And did he do that?

A. Each --

Q. In each set of conditions for each case, he was ordered to -- let me find the exact -- condition number six, in all three of the terms and conditions, he was supposed to report to the community supervision officer on the second Wednesday of each month at nine a.m., and at any subsequent time as instructed by the community supervision officer. He was instructed by you , was he not, to report on December 12, 1994 and August 8, 1995?

A. Yes. And there's also been some additions of missed appointments since the writing of the motion.

Q. Okay. So there was those two times that he failed to report and the other times?

A. Yes.

Q. And the defendant also, one of the conditions in all three, was to have no contact with -- condition number 38, have no contact and do not associate with Valerie Spradling. Do you know the defendant having contact with Ms. Valerie Spradling?

A. Yes, he has.

Q. Please describe that contact, would you, for the Court.

A. The defendant admitted to this officer that he's had several contacts with Ms. Spradling. When he was placed in work release, she was residing at his apartment and he was getting out of work release to -- his work was at home. She was still there in his apartment on occasions when he would come home. He would also take her out -- he admitted to taking her out for holiday dinners last year. He admits to a lot of phone conversations with her as in paying for her to be released from jail on a new charge of this year, paying for her rent.

Q. Well, there's been numerous contact between the defendant and Valerie Spradling?

A. That's Correct.

Q. And your understanding, Valerie Spradling was the victim in the sexual assault case?

A. That's correct.

Q. The defendant --

KELLY POND, CROSS-EXAMINATION BY DEFENSE:
(Contained in one volume trial court record at pp. 8-9)

Q. Ms. Pond, Larry Shaubhut, Jr.

As far as the contact with the victim, do you have any understanding of who initiated that contact?

A. It was initiated -- some of the phone calls, she would page him is my understanding of what he told me. She would page him, he would call her back. I don't know who initiated her living there when he was in work release and coming home from work release. I would assume both was.

Q. And do you have any idea if the dinner that the victim and Mr. Dunlap had were attended by anybody else or just them two?

A. He told me that his son, Steven, Jr., was also there.

Q. And also, as you said, phone conversations that Mr. Dunlap has relayed to you were the result of Ms. -- the victim, Valerie, his stepdaughter, paging him and him calling her back?

A. That's correct.

Q. Okay. And as far as the alcohol use, I think you said champagne during the holidays, and we're talking about a year ago holidays?

A. Yes.

Q. Or these holidays?

A. No. Last year's holidays.

VALERIE SPRADLING,
CROSS-EXAMINATION BY DEFENSE:
(Contained in one volume trial court record at pp. 13-16)

Q. Ms. Spradling, Larry Schaubhut, Jr.

You mentioned -- I think there were two Steves being mentioned. You have a brother?

A. Uh-huh. Yes.

Q. And his name is?

A. Steven.

Q. How old is he?

A. He's sixteen.

Q. And he's living in the house?

A. Yes.

Q. How is he related to you?

A. He's my half-brother. We have different fathers.

Q. Okay. But that's the defendant here's real son?

A. Yes.

Q. Now, as far as having contact, you said that he saw you in the house. Were you ever alone with Mr. Dunlap?

A. No. Steven was always there.

Q. Okay. Apparently, y'all had some holiday dinners --

A. Oh, yeah.

Q. -- approximately a year ago. Were you by yourself with Mr. Dunlap at that time?

A. No. Steven came with us.

Q. Do you have any other family living in this area?

A. My mother lives here.

Q. And do you have much contact with her?

A. No.

Q. Okay. So would it be fir to say that your brother is probably the closest family that you have right now?

A. Yes.

Q. You like to spend time with him?

A. Yeah.

Q. Okay. And is it also -- right now are you working?

A. No, not right now.

Q. Okay. Are you planning on staying in the Austin area?

A. No. At the end of the month, I'm moving to California.

Q. And why is that?

A. Just to go ahead and start school there.

Q. Okay. And as far as any other contacts with Mr. Spradling (presumably intended to refer to Dunlap), has there ever been, since he's been on probation, has he ever sexually confronted you or contacted you?

A. Oh, no.

Q. Are you afraid of Mr. Dunlap?

A. No.

Q. Okay. Is it your understanding that your brother, Steve, that Mr. Dunlap was taking care of Steve?

A. Yeah. Yeah.

Q. Okay. And as far as the work release, you were spending the night there because Mr. Dunlap spent the night in jail?

A. Yeah, exactly.

Q. Okay, Did you -- what was your role with you brother?

A. I was taking care of him pretty much. I was like the mother figure, I guess.

Q. Okay. When you say taking care of him, in what way?

A. Like I was making sure that he was like going to school, stuff like that.

STEVEN DUNLAP, DIRECT EXAMINATION BY DEFENSE:
(Contained in one volume trial record at pp. 21-23)

Q. Go ahead and state your name, please.

A. Steven Michael Dunlap.

Q. And you've -- previously it was mentioned by several people that your daughter, Valerie, was staying in your house while you were on work release at Del Valle.

A. Yes, sir.

Q. Could you please explain how that situation worked out?

A. Before I was put on probation, my ex-wife kicked my daughter out of the house, and she had no place to stay. So she asked me to stay at the house, and I told her that when I went to work release, she could stay there and spend the night and watch Steven, but that as soon as I got out of work release, I would have to -- she would have to find another place to live. And there were times when I came home early in the morning that she was there, but I immediately left to go to work. I mean, I worked out of my house, and Steven was always there.

Q. Okay. Did you ever five Ms. Spradling any money?

A. I gave her money several times. One, to a down payment for a truck so that she would have reliable transportation because she had just gotten a job. I gave her money for rent. I was paying her rent because she didn't have enough money for that, for her apartment after July, when I got out of work release. And there was a time when someone broke into her truck and the

insurance deductible was $500, and she didn't have that; and she asked me for that, and I deposited that into her account.

Q. Did -- were these requests for money, did you initiate this or did she ask you for the money?

A. No. No, she asked me for those.

Q. Did you ever call her without her calling you first?

A. No.

Q. Okay. It's alleged that she would page you and you would phone her back; is that accurate?

A. Yes, sir.

Q. Okay. Since you've been released from work release, what have your contacts been with your stepdaughter?

A. Phone. She's called me when she's had an emergency like the time that her truck got broke into and she was crying and wanted to get her car fixed, and she didn't has the money, so I deposited money in her bank account.

Q. Does she have any other family here who would help her out?

A. No, not at all.

* * *

TRIAL COURT'S PRONOUNCEMENT OF FINDINGS AND REVOCATION:
(Contained in the one volume trial record at pp. 33-34)

THE COURT: All right. Steven Dunlap, come forward, please.

State's filed a Motion to Revoke, and you've pled true to the Motion to Revoke, and that alone is legally sufficient for the Court to revoke your probation; however, in Cause No. 94-2625 on forgery and Cause No. 94-2463 on passing, I'll continue you on probation on both of those cases under the same terms and conditions that you're under now.

Now, Cause No. 94-4260, Steven Dunlap, you're on ten years' probation for indecency, and that does present a problem for the Court. While you have pled true to the violation of conditions of probation, drinking some champagne on the holidays doesn't bother me particularly. Continuing to see your stepdaughter when you were ordered not to is bad. I understand the reasons you did that, but that's bad. I don't know about deviant masturbation, but cruising the malls, it says here, targeting children, is something that the Court can't live with. I'm going to find that in Cause No. 94-4260, Steven Dunlap, you have violated your probation. Your probation is revoked.

APPENDIX D

ORDER REVOKING PROBATION:
(Contained in the one volume trial court transcript at pp. 98-99)

STEVEN DUNLAP
CAUSE # 0944260

On the 4th day of October, 1995, the District Attorney of Travis County, Texas, filed with the Judge of said Court a written report setting out the respects in which the defendant had violated the conditions of community supervision, to wit:

> failed to avoid the use of alcoholic beverages as by defendant's admission;
>
> did not report to probation officer on December 12, 1994 and August 8, 1995;
>
> has failed to have no contact with the victim, Valerie Spradling.

On the 20th day of November, 1995, the defendant appeared in open Court in person, his attorney, Larry Schubert, also being present, and the State appeared by her District Attorney and the Community Supervision and Corrections Office of Said Court, and after examining said written report and hearing evidence offered by both the State and the Defendant, the Court is of the

opinion that the defendant, Steven Dunlap, violated the terms and conditions of his community supervision in this respect:

> failed to avoid the use of alcoholic beverages as by defendant's admission;
>
> did not report to probation officer on December 12, 1994 and August 8, 1995;
>
> has failed to have no contact with the victim, Valerie Spradling.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the order suspending the imposition of the sentence, and placing the defendant on community supervision, heretofore entered in this said cause be, and the same is hereby revoked, and punishment assessed at Ten (10) years is hereby reduced to Three (3) years and the said defendant, Steven Dunlap, who has been adjudged guilty of the offense of Indecency With a Child by Contact, Second Degree Felony be, and he is hereby sentenced to, confinement in the Texas Department of Criminal Justice Institutional Division for a term of Three (3) years, and that he be taken by the authorized agent of the State of Texas or by the Sheriff of Travis County, Texas , and by him safely conveyed and

Justice Institutional Division, there to be confined in the manner and for the period aforesaid.

SIGNED this 11 day of Dec. A.D., 1995.

/s/ Bob Perkins

Judge, 331st Judicial District
Court of Travis County, Texas

APPROVED AS TO FORM:

Assistant District Attorney